BILL # SB 1221

TITLE: residential mortgage fraud

SPONSOR: Tibshraeny

STATUS: As Amended by Senate CED

PREPARED BY: Grant Nülle

FISCAL ANALYSIS

Description

The bill establishes the crime of residential mortgage fraud as a class 4 felony with a prison sentence of up to 3 years. The bill also includes a class 2 felony with a prison sentence of up to 10 years if a pattern of mortgage fraud is established. Mortgage fraud is currently prosecuted under existing fraud statutes, including A.R.S. § 13-2002 and A.R.S. § 13-2310, which carry prison sentences of up to 3 and 10 years, respectively.

Estimated Impact

The bill is expected to result in additional costs to the extent that it generates more residential mortgage fraud prosecutions. These costs could be incurred by the Department of Financial Institutions, the Attorney General and/or the Department of Corrections. It is difficult to determine the magnitude of the cumulative cost of these agencies in advance, but it is likely to be less than $500,000.

The Department of Financial Institutions estimates that the bill will not result in additional costs to their agency.

Analysis

The Department of Financial Institutions (DFI) currently investigates incidents of potential mortgage fraud in the course of its normal regulatory responsibilities. Cases are referred to the Attorney General (AG) for legal action. Residential mortgage fraud includes actions by individuals to raise the value of property beyond its market value to skim monies off the inflated mortgage, issuing loans for fictitious properties or persons, and maintaining ownership of property under false pretences.

Residential mortgage fraud can be prosecuted under existing statutes. The AG and DFI have differing perspectives as to whether the bill would facilitate more prosecutions. DFI believes the bill would help increase the number of cases referred for prosecution, while the AG asserts that increased public awareness of mortgage fraud, not the bill, will increase the number of cases prosecuted.

In FY 2005 and FY 2006, DFI reports it referred 3 cases each fiscal year to the AG. The AG estimated that it prosecuted 1 such case referred by DFI in the past 2 fiscal years. Based on past cases, the AG estimates the cost of prosecuting a mortgage fraud case at $5,000.

DFI expects the number of cases it refers to the AG's office to be 8 in FY 2007 and 12 in FY 2008 due to greater public awareness and reporting of potential mortgage fraud incidents. The agency also indicated that the bill, in creating the felony crime of residential mortgage fraud, would allow it to more readily refer cases to the AG as the bill would provide another avenue for criminal prosecution of these cases. While DFI says the bill will not have a fiscal impact, prosecuting cases in particular will likely require more DFI staff time to prepare materials for use in litigation.

The AG expects to prosecute up to 75% of the mortgage fraud cases referred to it by DFI, which would be 6 cases in FY 2007 and 9 cases in FY 2008. However, the AG indicates that it may prosecute most, if not all, mortgage fraud cases under existing fraud statutes, specifically A.R.S. § 13-2310. The AG believes that SB 1221 requires a greater burden of proof to establish a case relative to existing statutes.

If mortgage fraud prosecutions result in convictions and prison sentences, there is an annual cost to the Department of Corrections of $3,531 to $20,500 for each new inmate added to the prison system. The $3,531 is a marginal cost estimate for adding an additional inmate, whereas the $20,500 estimate incorporates all operating costs, including adding prison staff.

Local Government Impact

None

2/16/07